



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 3585-99

7 March 2000



Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 25 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 21 November 1990 at age 32. You received nonjudicial punishment on four occasions, for unauthorized absences, disobedience of a commissioned officer, missing ship's movement, and dereliction of duty. On 20 November 1992, the Bureau of Naval Personnel directed that you be discharged by reason of misconduct/pattern of misconduct, with a discharge under honorable conditions. On 2 February 1993, a pulmonary medicine specialist gave you diagnoses of mild obstructive lung disease and emphysema. He noted that you continued to abuse tobacco despite those diagnoses. He found you fit for discharge, and recommended that you discontinue tobacco use. You were discharged by reason of misconduct on 18 February 1993.

The Board noted that a discharge by reason of misconduct takes precedence over disability evaluation processing. Accordingly, in order for you to qualify for disability retirement or separation, you must demonstrate that your discharge by reason of misconduct was improper, and that you were unfit by reason of physical disability at that time. With regard to the former issue, the Board noted you committed numerous acts of misconduct during your

enlistment, which would have warranted a discharge under other than honorable conditions rather than the general discharge you actually received. The Board was not persuaded that the discharge was unwarranted or improper. With regard to the issue of physical disability retirement or separation, it noted that although you suffered from pulmonary conditions during your enlistment, you were found fit for discharge by a pulmonary medicine specialist, and you have not demonstrated that you were unfit to perform the duties of your office, grade, rank or rating because of your pulmonary conditions.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director